

## **REMARKS**

Applicants respectfully request reconsideration of the rejections of the claims of the instant application in view of the amendments above and the following remarks.

### **I. STATUS OF THE CLAIMS**

Claims 24, 26, 28-38, 40-49, 51, and 52 are presently pending and under consideration. Claims 1-23, 25, 27, 39, and 50 have been previously cancelled, without prejudice. Applicants reserve the right to file a continuation or divisional application on any non-pursued subject matter.

Claims 24 and 44 are amended to remove recitation of the term "dialkyl(ene) ethers" from the Markush group. No claims are amended. No new claims are added. No new matter is presented.

### **II. SUMMARY OF THE INVENTION AS CLAIMED**

One aspect of the claimed subject matter is directed to a wax dispersion with an average particle size of 0.5 to 100  $\mu\text{m}$  comprising (a) 10-75% of a wax phase with a melting point in the range of above 25°C to about 50°C, comprising at least one oil or wax component selected from the group consisting of dialkyl(ene) carbonates, dicarboxylic acids, hydroxyfatty alcohols and mixtures thereof, and at least one emulsifier, and (b) a water phase (claims 24, 26 and 28-35). Important to the present argument is the elimination of dialkyl(ene) ethers as a member of the Markush group of wax/oil component(a).

Another aspect of the claimed invention as currently amended is drawn to a wax dispersion comprising (a) 10-25% of a wax phase having a melting point in the range of about 35°C to about 50°C and (b) 75-90% of a water phase (claims 36-38 and 40-43). Another aspect of the claimed subject matter as presently amended is directed to a process for the production of such wax dispersions (claims 44-49). Yet another aspect

of the invention as claimed is directed to a body care preparation comprising such wax dispersions (claims 51-52).

### **III. REJECTIONS UNDER 35 U.S.C. § 103(a)**

Claims 24, 26, 28-38, 40-43, 51, and 52 are patentable over Ansmann (U.S. Patent No. 6,365,168) in view of Fogel (U.S. Patent No. 5,840,285). The Examiner stated that Ansmann discloses a wax dispersion comprising (1) pearlescent waxes with an average particle size of 12-14  $\mu\text{m}$  comprising **dialkyl ethers**, (2) cationic polymers, and (3) emulsifiers. Fogel discloses dermatological compositions comprising esters of fumaric and maleic acids. While the Examiner acknowledged that Ansmann does not disclose that the wax phase has a melting point between 25°C and 50°C, the Examiner stated that Fogel discloses that cosmetic solids ideally melt at body temperature, and that it would have been obvious to select the ideal melting point for the solid phase.

The Examiner further stated that “it would be possible” that the wax phase disclosed by Ansmann “could” have a melting point in the range of from above 25°C to about 50°C. In Applicants’ communication dated January 14, 2011, Applicants respectfully submitted that the Examiner’s rejection impermissibly relies on hindsight reasoning because nothing in Ansmann addresses the problem of obtaining a suitable wax phase with a melting point in the range of from above 25°C to about 50°C. Accordingly, there is no disclosure or suggestion as to which of Ansmann’s list of components is suitable to achieve the unexpected advantages of the presently claimed invention.

In the Advisory Action dated February 24, 2011, the Examiner did not find Applicants’ arguments persuasive<sup>1</sup> and further cited to Ichikawa (U.S. Patent No. 5,474,778) as disclosing a cosmetic composition comprising sterol esters with a melting point of around 35 to 40°C. The Examiner also cited to Hoeffkes (U.S. patent No.

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<sup>1</sup> Applicants respectfully note that in the Advisory Action dated February 24, 2011, the Examiner did not specifically address Applicants’ arguments regarding hindsight reasoning.

4,919,923) as disclosing cosmetic emulsions having an oil component comprising C<sub>6-22</sub> **dialkyl ethers**, and which are pourable at 19 to 22 °C.

While Applicants do not necessarily agree with the Examiner's reasoning, Applicants have amended the claims to further the prosecution of this application. In particular, claims 24 and 44 are amended to remove recitation of the term "**dialkyl(ene) ethers**" from the Markush group. Applicants respectfully submit that while Ansmann and Hoeffkes may disclose compositions comprising **dialkyl ethers**, none of the cited references discloses or suggests the presently claimed wax dispersion comprising dialkyl(ene) carbonates, dicarboxylic acids, hydroxyfatty alcohols, and mixtures thereof.

To the extent that the Examiner may rely on Banowski et al. (DE 10058224), Bruning et al. (WO/2001/058417), or Baumoller et al. (WO/2002/056841) for the argument that dialkyl ethers and dialkyl carbonates are known equivalents (as stated in the Office Action dated April 2, 2010), Applicants respectfully reassert the arguments presented in Applicants' correspondence dated August 2, 2010.<sup>2</sup> That is, these references do not disclose or suggest how to achieve the presently claimed wax dispersions having an average particle size of 0.5 to 100 µm and a wax phase with a melting point in the range of from above 25 °C to about 50 °C. With respect to Baumoller, that reference states that the oil phase is preferably liquid at 20 °C. See, e.g., Baumoller at ¶¶ 0042-0049. Furthermore, Baumoller's specific examples disclose compositions comprising polyglycerol poly-12-hydroxystearate (liquid at room temperature), polysorbate 20 (liquid at room temperature), lauryl glucoside (melting point of 77 °C), glycerol stearate (melting point of 55 °C), and cocoglyceride di-n-octyl carbonate (liquid at room temperature). According to the examples at ¶ 0135 of Baumoller, the compositions comprise 65.3% by weight of components liquid at room temperature, and about 8.3% by weight of components with a melting point well above 50 °C. Thus, Applicants respectfully submit that the overall melting point of the wax phase (i.e., wax, oil, and emulsifiers) would necessarily be below 25 °C.

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<sup>2</sup> Applicants respectfully note that the Amendment submitted on August 2, 2010, reintroduced the claim term "dialkyl(ene) ethers" into claims 24 and 44. Accordingly, these references were not cited in the following Office Action dated October 14, 2010, and Applicants' arguments have not been addressed.

Moreover, Baumoller does not disclose wax dispersion particle sizes falling within the claimed range of 0.5 to 100  $\mu\text{m}$ . Similarly, Bruning and Banowski disclose emulsions with a particle size below the presently claimed range. With respect to Bruning, the appearance of the disclosed microemulsions is "clear," which is a result of the small particle size of the dispersed emulsion droplets being under 300 nm. See Bruning, ¶0002, Table 1. With respect to Banowski, the disclosed emulsions have a particle size below 500 nm. See Banowski, claim 1.

Likewise, claims 44-49 are patentable over Ansmann in view of Fogel and any of Ichikawa, Hoeffkes, Banowski, Bruning, or Baumoller, and further in view of Bucheler et al. (U.S. Patent No. 4,996,004). The Examiner acknowledges that Ansmann and Fogel fail to teach the claimed production method, but states that Bucheler discloses a preparation method for stable cosmetic dispersions of organic substances in water. Applicants respectfully traverse this rejection for at least the reasons discussed above; that is, none of the secondary references disclose or suggest to one skilled in the art how to modify the process of Ansmann to obtain the presently claimed composition and melting point range of the recited wax phase.

In view of the above, Applicants respectfully submit that the presently claimed invention is patentable over Ansmann in view of Fogel, and further in view of Ichikawa, Hoeffkes, Banowski, Bruning, and/or Baumoller. Accordingly, the Examiner is respectfully requested to withdraw the instant rejection.

**CONCLUSION**

In view of the abovementioned remarks Applicants respectfully assert that this application is now in condition for allowance. The Examiner is invited to contact the undersigned counsel in order to further the prosecution of this application in any way.

Respectfully submitted,

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